
OFFICE OF THE ATTORNEY GENERAL
Official Opinion No. 2019-3

March 7, 2019

OFFICIAL OPINION NO. 2019-3

Mr. Dustin D. Huddleston, Esq.
Huddleston & Huddleston
Clarke House
98 W. Jefferson St.
P.O. Box 9
Franklin, IN 46131

RE: Expenditures from Tourism Funds to Benefit For-Profit Corporations

Dear Mr. Huddleston:

ISSUE

On behalf of the Johnson County Convention, Visitor, and Tourism Board ("Tourism Board"), you requested the opinion of the Office of the Attorney General ("OAG") as to whether the Tourism Board may expend funds from its Convention, Visitor, and Tourism Promotion Fund ("Tourism Fund") for the direct benefit of for-profit corporations under any circumstances.

More directly, the Tourism Board asks whether it could enter into a contract or otherwise make an award from its Tourism Fund to a for-profit corporation where the Tourism Board determines the for-profit business's convention, trade show, special event, or recreational activity would bring more visitors or tourists to the county.

BRIEF ANSWER

Under these statutory provisions, the Tourism Board may not enter into an agreement or contract, award a grant, or otherwise make a direct payment from its Tourism Fund to a for-profit corporation for the purpose of promoting and encouraging conventions, visitors, or tourism in Johnson County. While such awards are reserved to not-for-profit corporations to discharge these functions, the statutory provisions do not restrict such not-for-profit corporations from engaging in separate contractual agreements with for-profit entities in order to satisfy the requirements of the award from the Tourism Fund.

BACKGROUND

As noted in your correspondence, the Tourism Board was created on December 14, 2015, pursuant to Ind. Code § 6-9-18-5. Under this statute, the Tourism Board's purpose is "to promote the development and growth of the convention, visitor, and tourism industry" in Johnson County. See Ind. Code § 6-9-18-5(a). In addition, Ind. Code § 6-9-18-4 allows money from the Tourism Fund to be expended:

Only to promote and encourage conventions, visitors, and tourism within the county. Expenditures . . . may include, but are not limited to, expenditures for advertising, promotional activities, trade shows, special events, and recreation.

The Tourism Board's powers include the power to enter into contracts and agreements; consider requests and proposals for funding by "corporations qualified under [IC 6-9-18-6\(a\)\(6\)](#)"; and, if such proposals or requests are approved, expend funds from the Tourism Fund "to any Indiana not-for-profit corporation to promote and encourage conventions, visitors, or tourism in the county." Ind. Code § 6-9-18-6(a)(1)-(3). The Tourism Board would like to have the flexibility to make an award from the Tourism Fund to a for-profit business staging a convention, trade show, or special event in the county, especially with regard to advertisements and similar promotions of the event.

ANALYSIS

On December 14, 2015, the Board of Commissioners of Johnson County adopted an ordinance creating the nine-member Johnson County Convention, Visitor, and Tourism Board ("Tourism Board"). The Tourism Board

was created specifically "to promote the development and growth of the convention, visitor, and tourism industry in Johnson County." The following powers enumerated in the ordinance are pertinent to this inquiry (emphasis added):

The [Tourism] Board may:

- (1) accept and use gifts, grants, and contributions from any public or private source, under terms and conditions that the commission considers necessary and desirable; . . .
- (3) enter into contracts and agreements, subject to approval by the Board of Commissioners; . . .
- (5) receive and approve, alter, or reject requests and proposals for funding by corporations qualified under subdivision (6);
- (6) after its approval of a proposal, transfer money, quarterly or less frequently, for the Convention, Visitor, and Tourism Fund ("Fund 7304"), or from money transferred from Fund 7304 to the [Tourism] Board's Treasurer under IC § 6-9-18-4(b), to any *Indiana not-for-profit corporation* to promote and encourage conventions, visitors, or tourism in the county[.]. . .

The Tourism Board has developed a "competitive matching grant program" intended to spur development of tourism in the county through encouragement of "marketing efforts of festivals, projects, special events, sporting events and programs." Intended recipients are "county organizations, cities and towns" with the aim of bringing in new business, developing local events, promoting festivals and sporting events, and encouraging visitation from persons residing outside the county.¹ Such grants are intended to cover certain expenses incurred to promote the event, such as advertising, brochures, websites, billboards and fees "for nationally recognized entertainment." There are certain categories for which the grants cannot be used.

Grant funds cannot be used for:

- Marketing efforts within Johnson County, unless the promotional campaign is directed to the residents to encourage visitation from their friends and relatives outside of Johnson County.
- Annual operating expenditures of the event, festival or sporting event.
- Salaries, wages or employee benefits.
- Prize money, scholarships, awards, plaques, t-shirts, certificates, buttons or newsletters.
- Events or attractions which are restricted to private or exclusive participation.
- Seasonal or holiday events celebrated by most communities or one-day athletic events that have a primarily local draw. The committee will consider evidence of unique characteristics and/or aspects that provide regional draw to these types of events if such aspects set it apart from the average event.²

Neither the Grant Application, the Grant FAQs, nor the website indicates that an applicant must be a not-for-profit corporation. In addition, the application does not require the applicant to identify any entities the presumed not-for-profit may be or is contracting with in order to carry out the event.³ A post-event questionnaire that must be completed by a successful applicant does ask how the grant money was spent but does not require any specific disclosure of other entities that may have contracted with the successful applicant to carry out of the event.⁴

As noted *supra*, the Tourism Board was established pursuant to Ind. Code § 6-9-18 *et seq.*, the Uniform County Innkeeper's Tax Act.⁵ The ordinance establishing the Tourism Board is authorized by Ind. Code § 6-9-18-5. The powers of the Tourism Board, as stated in the ordinance, are based on the same language in Ind. Code § 6-9-18-6(a), including the requirement that all "requests and proposals for funding" must be from "qualified corporations," which the statute defines as "any Indiana not-for-profit corporation." Ind. Code § 6-9-18-6(a)(5), (6).

Johnson County levies an innkeeper's tax, as authorized by Ind. Code § 6-9-18-3. The taxes levied under this provision provide for the Tourism Fund. See Ind. Code § 6-9-18-4(a). Ind. Code § 6-9-18-4(c) specifically states, in pertinent part, that money in such a fund "may be expended only to promote and encourage conventions, visitors, and tourism within the county."

The OAG previously addressed both Ind. Code § 6-9-18-4 and Ind. Code § 6-9-18-6.⁶ In 1997, the OAG was asked whether recent amendments to the Uniform County Innkeeper's Tax Act would permit transfers of money from the Tourism Fund to "industrial development corporations." The OAG noted that recent legislative amendments deleted "industrial development" from Ind. Code § 6-9-18-4(c), indicating an intent that money from this fund not be expended on capital expenditures for industrial development.

However, if a county has created a Tourism Board under Ind. Code § 6-9-18-5, the Tourism Board "may expend money from the convention, visitor and tourism fund to any Indiana not-for-profit corporation to promote

and encourage conventions, visitors and tourism in the county."⁷

An "industrial development corporation" is not categorically excluded from consideration for an award from the Tourism Fund. However, to be eligible, the "industrial development corporation" would have to be "an Indiana not-for-profit corporation" and the funds would have to "be used to promote and encourage conventions, visitors or tourism in the county," as required by Ind. Code § 6-9-18-6(a)(6).⁸

CONCLUSION

The pertinent statutory provisions addressed by the OAG in 1997 have remained unchanged. The reasoning of the 1997 OAG Opinion remains sound: A Tourism Board established under Ind. Code § 6-9-18-5 may not award a grant or enter into a contract or other agreement with a for-profit corporation "to promote and encourage conventions, visitors, or tourism in the county" from the Tourism Fund. Ind. Code §§ 6-9-18-4(c), 6-9-18-6(a)(6). The Tourism Board is prevented from such a direct award based not only on the aforementioned statutory provisions but by the language in its authorizing ordinance.

However, neither the statutory provisions nor the authorizing ordinance prohibit an eligible not-for-profit entity from entering into a separate contract with a for-profit entity to assist it in the discharge of the approved event. Ind. Code § 6-9-18 *et seq.* and the authorizing ordinance prohibit a direct contractual relationship with a for-profit entity in the promotion of tourism in a county; it does not address or otherwise limit subsequent agreements between successful eligible applicants and for-profit entities.

SUBMITTED and
ENDORSED FOR PUBLICATION

Curtis T. Hill, Jr.
Attorney General

Richard M. Bramer, Chief Legal Counsel
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¹ The Tourism Board promotes Johnson County as "Festival Country Indiana." The information regarding tourism promotion grants (the application itself and an accompanying FAQ – commonly known as an abbreviation for Frequently Asked Questions) from its Tourism Fund is garnered from its website, <https://www.festivalcountryindiana.com/grants> (last visited November 4, 2018).

² <https://www.festivalcountryindiana.com/grant-faq> (last visited November 4, 2018).

³ See file:///C:/Users/Kevin/Downloads/JJC%20grant%20application%2010-16-17(1).pdf (last visited November 4, 2018).

⁴ See file:///C:/Users/Kevin/Downloads/JJC%20Post-event%20questions%2010-16-17.pdf (last visited November 4, 2018).

⁵ A number of counties have their own statutory provisions permitting the levying of an innkeeper's tax and the creation of tourism boards. See, generally, Ind. Code Art. 6-9. Johnson County is not one of these; accordingly, it is formed under the uniform provisions of Ind. Code § 6-9-18 *et seq.*

⁶ 1997 Op. Ind. Att'y Gen. No. 06 (October 17, 1997).

⁷ *Id.*

⁸ *Id.*

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